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Air Resources Board

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Gray Davis
Governor

MSO #2003-03

July 7, 2003

TO: All Manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles
All Manufacturers of Heavy-Duty Vehicles and Engines
All Independent Service Repair Facilities
All Manufacturers of Aftermarket Parts
All Other Interested Parties

SUBJECT: PROPOSED AMENDMENTS TO THE CALIFORNIA MOTOR VEHICLE
SERVICE INFORMATION RULEMAKING

In a Board Hearing scheduled for December 11, 2003, staff will provide an update to the Board on the effectiveness of the Air Resources Board's (ARB's) service information rule, applicable to manufacturers of vehicles meeting On-Board Diagnostic II (OBD II) systems. The regulation was approved by the Board for adoption on December 13, 2001, and formally adopted on July 29, 2002. Implementation of the regulation began on March 30, 2003. The rule requires motor vehicle manufacturers to make available for purchase emission-related service information, as well as information that will ensure wide availability of diagnostic scan tools and reprogramming equipment. The regulation specifies the type of information required for disclosure, the manner by which this information is to be made available, and enforcement actions for non-compliance. In addition to the update, the staff plans to propose regulatory amendments for purposes of clarification and to address stakeholder issues and concerns.

Staff is conducting a public workshop to discuss existing issues and its preliminary proposed regulatory amendments (See Attachments 1 (background) and 2 (modified language)). Motor vehicle manufacturers, aftermarket companies, the service industry and other interested parties will also have the opportunity to provide input regarding other concerns about the existing regulation. The workshop will be held at the date, time, and location below:

Date: Thursday, August 14, 2003
Time: 9:00 a.m. to 12:00 p.m.
Location: Air Resources Board
Room 100
9500 Telstar Avenue
El Monte, California 91731

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our Website: <http://www.arb.ca.gov>.*

California Environmental Protection Agency

If necessary, interested parties may contact staff to set up an additional individual meeting. If you wish to schedule such a meeting, please contact Mr. Dean Hermano, Staff Engineer, at (626) 459-4487.

Interested parties unable to participate in this workshop, or those wishing to supply additional information, are encouraged to submit written comments. Such written comments should be sent no later than August 7, 2003, to Mr. Allen Lyons, Chief, Mobile Source Operations Division, Air Resources Board, 9528 Telstar Avenue, El Monte, CA 91731.

If any party wishes the information submitted with respect to the workshop to be treated as confidential by staff, it should be clearly marked as "confidential" and be on pages which are easily detachable from other non-confidential information. California guidelines (sections 91000-91022, Title 17, California Code of Regulations, and Health and Safety Code section 39660(e)) will be followed in the handling of confidential information. Affected parties should justify confidential treatment of any information not specifically mentioned in these guidelines.

To request special accommodations for persons with disabilities, please contact Mr. Dean Hermano no later than August 7, 2003. Additionally, to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916 or (800) 700-8326 (Telecommunications Device for the Deaf or TDD).

Questions regarding this meeting or issues that you wish to be discussed may be directed to myself at (626) 450-6156, or Mr. Dean Hermano of my staff at (626) 459-4487 or e-mail at dhermano@arb.ca.gov.

Sincerely,

/s/

Allen Lyons, Chief
Mobile Source Operations Division

Attachments (2)

ATTACHMENT 1

Discussion of Proposed Amendments to the California Motor Vehicle Service Information Rulemaking

California's service information regulation, as specified in Title 13, California Code of Regulations (13 CCR), section 1969, and 17 CCR, sections 60060.1 through 60060.34, was approved by the Board on December 13, 2001. Implementation began on March 30, 2003. The rule is required by the legislature in response to concerns from the aftermarket industry regarding the availability of emission-related service information and diagnostic tools. The regulation is applicable to 1994 model year and later passenger cars, light-duty trucks, and medium-duty vehicles that are equipped with second-generation on-board diagnostic (OBD II) systems. OBD II systems are incorporated into vehicle on-board computers to monitor the performance of virtually every component and system that can affect emissions. These OBD II systems alert vehicle owners when emission-related malfunctions occur, and provide service technicians with information regarding the nature of the problem. Complete emission-related service information is therefore needed to enable technicians to repair identified problems. In the past, independent service providers have not always been able to obtain the same level of information that has been available to franchised dealerships.

The regulation addresses service information availability in three specific ways:

1. Motor vehicle manufacturers are required to make available all emission-related diagnostic and service literature (e.g., service manuals, technical service bulletins, initialization information and training materials) in an easily accessible format at reasonable costs. Access to most of this information over the Internet is specifically required.
2. Motor vehicle manufacturers must make available for purchase the same diagnostic tools that franchised dealerships have access to. Further, specific information that can be used to design and market comparable aftermarket service and reprogramming equipment must be provided.
3. Motor vehicle manufacturers must make available basic OBD II system design information to help service technicians understand OBD II system operation, and better ensure that aftermarket parts manufacturers will be able to produce emission-related replacement parts that are OBD II compatible and effective in controlling emissions.

The United States Environmental Protection Agency (U.S. EPA) promulgated its regulation for service information in 1995 and recently amended it on May 30, 2003, to improve service information availability via the Internet. These amendments become

effective on August 25, 2003. To promote consistency, staff has harmonized its regulation with that of the U.S. EPA wherever possible.

Current Implementation Status:

Vehicle manufacturers' websites went online on or before March 30, 2003. At this time, the staff is still reviewing manufacturers' website designs and content. Initially, however, it appears overall that manufacturers have been successful in making available the information required by the regulation. Notwithstanding, staff believes a few issues regarding the regulation are ready for further consideration by the Board.

Immobilizer/Rebuilder Testing:

At the December 2001, Board Hearing, significant discussion took place on the subject of passive anti-theft systems known as immobilizers. Specifically, the discussion focused on whether remanufacturers of on-board computers were entitled under Health and Safety Code sections 43105.5 (a)(5) and (6) to immobilizer initialization information to facilitate bench testing of remanufactured immobilizer equipped computers. The Board ultimately adopted staff's proposed regulations which did not contain the information access requirements sought by on-board computer remanufacturers. However, the Board directed the staff to work with stakeholders on this issue to determine if a way exists for remanufacturers to effectively bench test rebuilt computers with immobilizer circuitry without compromising motor vehicle security.

In the year following the Board Hearing, Air Resources Board (ARB) staff held several discussions with vehicle manufacturers and on-board computer remanufacturers. Through the discussions, three potential solutions to the problem directed to staff by the Board were identified: black boxes, bench test calibrations, and bench test designs that rely on immobilizer-related vehicle service procedures. For each of these potential solutions, either vehicle manufacturers or the computer remanufacturers have expressed significant concerns regarding effectiveness and/or the resource burden necessary for implementation.

The ARB staff hosted a meeting with the Alliance of Automobile Manufacturers (AAM), the Association of International Automobile Manufacturers (AIAM), and representatives from the on-board computer remanufacturing industry in January 2003, to further discuss these issues. At the meeting, the discussion was focused separately on computer designs for future vehicle models and for those already in-use. For future vehicles, participants discussed the concept of designing into the on-board computer a brief self test of computer functions disabled by immobilizer logic, typically output signals relating to fuel injector firing or the ignition system.

Regarding existing vehicles, participants agreed that the type of information necessary to facilitate bench testing varied greatly based on the design of the computer and/or its

software. For some computers, no additional information is necessary for effective bench testing. For other designs, the remanufacturers stated that additional information or capabilities¹ are needed to avoid costly bench test setups, and bench testing procedures that required significant delay periods for immobilizer initialization. Apart from these categories, remanufacturers stated that computers with immobilizer systems that cannot be initialized to recognize new keys and some designs that cannot be reprogrammed are not viable candidates for remanufacturing and, thus, no immobilizer initialization information would be needed. The vehicle manufacturers agreed to study the issue of developing a self test for future model years, and agreed to investigate, on a case-by-case basis, whether they could provide additional information or other help to address remanufacturers bench testing concerns.

In following-up on the January 2003 meeting, AAM and AIAM drafted a letter reiterating manufacturers' willingness to continue working with computer remanufacturers to define and implement bench test configurations. Further, the letter indicated that a self-test capability built into the on-board computer is a feasible concept. However, the associations were opposed to such a concept becoming a regulatory requirement based on cost and the lack of perceived emission benefits.

Although staff has attempted to explore all options available to resolve the ECU remanufacturing issue, its interpretation of the language in Health and Safety Code Sections 43105.5 (a)(5) and (6) has not changed since the 2001 Board Hearing. As such, staff does not plan to propose additional immobilizer information requirements as part of the Board update. However, the staff is hopeful that it will be able to report that significant progress towards resolving this issue has been made through cooperative efforts between computer remanufacturers and vehicle manufacturers. The staff welcomes interested parties to provide comment on its position, and/or to bring to its attention other ideas for potential solutions to this issue.

Heavy-Duty OBD Systems:

This fall, the ARB plans to propose OBD requirements for heavy-duty vehicles (i.e., vehicles weighing 14,000 pounds gross vehicle weight (GVW) or greater) beginning with the 2007 model year. Doing so makes it necessary for the applicability of the service information regulation to also be updated in 13 CCR, section 1969(a) to include manufacturers of heavy-duty vehicles and engines. SB 1146 specifically requires all manufacturers of 1994 model year and later vehicles equipped with OBD systems to make the emission-related service information available for purchase.

The staff's proposal would extend the current service information content and access requirements to heavy-duty vehicles unchanged. However, as indicated in the staff's

¹ The types of information of capabilities needed would likely vary between manufacturers, and could vary within a manufacturer's product line or across model years.

Initial Statement of Reasons (October 23, 2001), it was recognized that there may be a need for the regulation to reflect differences between the light- and heavy-duty industries in regards to service procedures and tools, based on how heavy-duty vehicles are typically manufactured and serviced. The staff is seeking comments from interested parties at the workshop regarding any specific changes that may be necessary for heavy-duty vehicles.

J2534 Update:

The regulation requires reprogramming protocols for 2004 and later model year vehicles to be in compliance with the Society of Automotive Engineers (SAE) standard J2534 (13 CCR, section 1969(f)(3)(A)). The staff has learned that minor implementation issues have arisen with the introduction of 2004 models. The staff understands at this time that added detail and clarification in the J2534 document should address these issues going forward. Accordingly, the staff plans to update the regulatory reference to SAE J2534 at the Board hearing.

Other Modifications:

Some minor modifications are proposed in Attachment 2 to further harmonize the requirements with federal service information requirements. In addition to the issues already discussed, the staff is requesting input on other possible amendments to address stakeholder concerns, improve the regulation, or to further harmonize with federal requirements.

Attachment 2:

(Proposed Amendments to)

Title 13, California Code of Regulations, Chapter 1, Motor Vehicle Pollution Control Devices, Article 2, Approval of Motor Vehicle Pollution Control Devices (New Vehicles);
Section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model
Passenger Cars, Light-duty and Medium-Duty Vehicles

Note: This document is printed in a style to indicate changes from the language adopted on July 29, 2002. Existing language is indicated by plain text. All additions and deletions to language therein are indicated by underline and ~~strikeout~~, respectively.

Final Regulation Order

Section 1969, title 13, California Code of Regulations, chapter 1, Motor Vehicle Pollution Control Devices:

Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)

§1969 Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles

- (a) Applicability.
 - (1) Unless otherwise noted, this section shall apply to all California-certified 1994 and subsequent model-year passenger cars, light-duty trucks and medium-duty vehicles equipped with on-board diagnostic systems pursuant to title 13, California Code of Regulations, sections 1968.1. This section shall supersede the provisions of section 1968.1(k)(2.1) at all times that this section is effective and operative. These regulations shall also apply to any passenger cars, light-duty trucks and medium-duty vehicles certified to future on-board diagnostic requirements adopted by the Air Resources Board.
 - (2) This section shall apply to all California-certified heavy-duty engines and vehicles certified to any future on-board diagnostic requirements adopted by the Air Resources Board.
- (b) Severability of Provisions. If any provision of this section or its application is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected.
- (c) Definitions. The definitions in section 1900(b), Division 3, Chapter 9, Title 13 of the California Code of Regulations, apply with the following additions:
 - (1) “Access codes, recognition codes and encryption” mean any type, strategy, or means of encoding software, information, devices, or equipment that would prevent the access to, use of, or proper function of any emission-related part.
 - (2) “Bi-directional control” means the capability of a diagnostic tool to send messages on the data bus (if applicable) that temporarily override a module’s control over a sensor or actuator and give control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.
 - (3) “Covered person” means: (1) any person or entity engaged in the business of service or repair of motor vehicles who is licensed or registered with the Bureau of Automotive Repair, pursuant to Section 9884.6 of the Business and Professions Code, to conduct that business in California; (2) any commercial business or government entity that repairs or services its own California motor vehicle fleet(s);

- (3) tool and equipment companies; or (4) any person or entity engaged in the manufacture or remanufacture of emission-related motor vehicle parts for California motor vehicles._
- (4) “Data stream information” means information that originates within the vehicle by a module or intelligent sensor (including, but not limited to, a sensor that contains and is controlled by its own module) and is transmitted between a network of modules and intelligent sensors connected in parallel with either one or two communications wires. The information is broadcast over communication wires for use by other modules such as chassis or transmission modules to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration-related information.
- (5) “Days” means calendar days; in computing the time within which a right may be exercised or an act is to be performed, the day of the event from which the designated period runs shall not be included and the last day shall be included, unless:
- (A) for purposes of section 1969(e), the last day falls on a Sunday, or a California-recognized holiday observed by the subject motor vehicle manufacturer, in which case the last day shall be the following day;
- (B) for all other purposes, the last day falls on a Saturday, Sunday, or a California-recognized holiday observed by the subject motor vehicle manufacturer, in which case the last day shall be the following day.
- (6) “Emission-related motor vehicle information” means information regarding any of the following:
- (A) Any original equipment system, component, or part that controls emissions.
- (B) Any original equipment system, component, or part associated with the powertrain system including, but not limited to, the fuel system and ignition system.
- (C) Any original equipment system or component that is likely to impact emissions, including, but not limited to, the transmission system.
- (7) “Emission-related motor vehicle part” means any direct replacement automotive part or any automotive part certified by Executive Order that may affect emissions from a motor vehicle, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts and specialty parts.
- (8) “Enhanced data stream information” means data stream information that is specific for a motor vehicle manufacturer’s brand of tools and equipment.
- (9) “Enhanced diagnostic tool” means a diagnostic tool that is specific to the motor vehicle manufacturer’s vehicles.

- (10) “Fair, reasonable, and nondiscriminatory price”, for the purposes of section 1969, means a price that allows motor vehicle manufacturers to be compensated for the cost of providing required information and diagnostic tools considering the following:
 - (A) The net cost to the motor vehicle manufacturers’ franchised dealerships for similar information obtained from motor vehicle manufacturers, less any discounts, rebates or other incentive programs;
 - (B) The cost to the motor vehicle manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included;
 - (C) The price charged by other motor vehicle manufacturers for similar information;
 - (D) The price charged by the motor vehicle manufacturer for similar information immediately prior to January 1, 2000;
 - (E) The ability of an average covered person to afford the information.
 - (F) The means by which the information is distributed;
 - (G) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use;
 - (H) Inflation; and
 - (I) Any additional criteria or factors considered by the United States Environmental Protection Agency for the determination of service information costs under federal regulations.
 - (11) “Initialization” or “reinitialization” means the process of resetting a vehicle security system by means of an ignition key or access code(s).
 - (12) “Nondiscriminatory” as used in the phrase “fair, reasonable, and nondiscriminatory price” means that motor vehicle manufacturers shall not set a price for information or tools that provides franchised dealerships with an unfair economic advantage over covered persons.
 - (13) A “Reasonable business mean” is a method or mode of distribution or delivery of information that is commonly used by businesses or government to distribute or deliver and receive information at a fair, reasonable, and nondiscriminatory price. A reasonable business mean includes, but is not limited to, the Internet, first-class mail, courier services, intermediary information repositories, and fax services.
- (d) (1) Service Information: Except as expressly provided below, motor vehicle manufacturers shall make available for purchase to all covered persons all emission-related motor vehicle information that is provided to the motor vehicle manufacturer’s franchised dealerships for subject

vehicle models. The information shall include, but is not limited to, diagnosis, service, and repair information and procedures, technical service bulletins, troubleshooting guides, wiring diagrams, and training materials.

- (2) On-Board Diagnostic System (OBD II) Information. Motor vehicle manufacturers shall make available for purchase to all covered persons, a general description of each OBD II system used in 1996 and subsequent model-year vehicles, which shall include the following:
 - (A) A general description of the operation of each monitor, including a description of the parameter that is being monitored.
 - (B) A listing of all typical OBD II diagnostic trouble codes associated with each monitor.
 - (C) A description of the typical enabling conditions for each monitor to execute during vehicle operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, vehicle speed range, and time after engine startup. Motor vehicle manufacturers must also list all monitor-specific OBD II drive cycle information for all major OBD monitors as equipped including, but not limited to, catalyst, catalyst heater, oxygen sensor, oxygen sensor heater, evaporative system, exhaust gas recirculation, secondary air, and air conditioning system. As applicable, motor vehicle manufacturers of diesel vehicles must also list monitor-specific drive cycles for those vehicles that perform misfire, fuel system, and comprehensive monitoring under specific driving conditions (i.e., non-continuous monitoring).
 - (D) A listing of each monitor sequence, execution frequency and typical duration.
 - (E) A listing of typical malfunction thresholds for each monitor.
 - (F) For OBD II parameters for specific vehicles that deviate from the typical parameters, the OBD II description shall indicate the deviation and provide a separate listing of the typical values for those vehicles.
 - (G) Identification and scaling information necessary to interpret and understand data available to a generic scan tool through "mode 6," pursuant to Society of Automotive Engineers (SAE) J1979, which is incorporated by reference in title 13, CCR section 1968.1.
 - (H) The information required by this subsection shall not include specific algorithms, specific software code or specific calibration data beyond that required to be made available through the generic scan tool pursuant to section 1968.1, except where such algorithms, codes, or data are made available to franchised dealerships. To the extent possible, motor vehicle manufacturers shall organize and format the information so that it will not be

necessary to divulge specific algorithms, codes, or calibration data considered to be a trade secret by the motor vehicle manufacturer.

- (3) On-Board Computer Initialization Procedures.
 - (A) Consistent with the requirements of subsection (h) below, motor vehicle manufacturers shall provide to all covered persons computer or anti-theft system initialization information and/or related tools necessary for:
 - (i) The proper installation of on-board computers on motor vehicles that employ integral vehicle security systems; or
 - (ii) The repair or replacement of any other emission-related part.
 - (B) A motor vehicle manufacturer may request Executive Officer approval to be excused from the requirements above for some or all model year vehicles through the 2007 model year. The Executive Officer shall approve the request upon him or her finding that the motor vehicle manufacturer has demonstrated that:
 - (i) The availability of such information to covered persons would significantly increase the risk of vehicle theft, and
 - (ii) It will make available to covered persons reasonable alternative means to install computers, or to otherwise repair or replace an emission-related part, at a fair, reasonable, and nondiscriminatory price and that such alternative means do not place covered persons, as a class, at a competitive disadvantage to franchised dealerships in their ability to service and repair vehicles.
 - (C) The approval is conditional and subject to audit under paragraph (j) below and possible rescission if the conditions set forth in paragraph (d)(3)(B) fail to be satisfied.
 - (4) The information in this subsection shall be made available for purchase no later than 180 days after ~~the effective date of these regulations or January 1, 2003, whichever is later,~~ October 1, 2002, for vehicle models introduced into commerce on or before ~~these dates~~ October 1, 2002. For all new vehicle models for which ~~production commences~~ introduction into commerce occurs after ~~the effective date of these regulations,~~ October 1, 2002, motor vehicle manufacturers shall make available for purchase the required information no later than 180 days after the start of vehicle introduction into commerce or concurrently with its availability of the information to franchised dealerships, whichever occurs first.
- (e) (1) Information required to be made available for purchase under subsection (d), excluding paragraph (d)(3), shall be directly accessible via the Internet. As an exception, motor vehicle manufacturers with annual California sales of less than 300 vehicles (based on the

average number of California-certified vehicles sold by the motor vehicle manufacturer in the three previous consecutive model years) have the option not to provide required materials directly over the Internet. Such motor vehicle manufacturers may instead propose an alternative reasonable business mean for providing the information required by this section to the Executive Officer for review and approval. The alternate method shall include an Internet website that adequately specifies that the required service information is readily available through other reasonable business means at fair, reasonable, and nondiscriminatory prices. If a manufacturer later exceeds the three-year vehicle sales average, it would be required to begin complying with all Internet availability requirements the next model year. In such cases, the requirements would apply only to those vehicle models certified in that and subsequent model years and would not apply to any models that were within carry-over test groups that were initially certified before the sales average was exceeded.

- (2) For purposes of making the information available for purchase via the Internet, motor vehicle manufacturers, or their designees, shall establish and maintain an Internet website(s) that:
 - (A) Is accessible at all times, except during times required for routine and emergency maintenance. Routine maintenance shall be scheduled after normal business hours. The Executive Officer must be notified immediately by the motor vehicle manufacturer if emergency maintenance becomes necessary.
 - (B) Houses all of the required information such that it is available for direct online access, except as provided in subsections (d)(3), (e)(2)(G) and (e)(2)(J). In addition to direct access, motor vehicle manufacturers may concurrently offer the information by means of electronic mail, fax transmission, or other reasonable business means.
 - (C) Is written in English with all text using readable font sizes.
 - (D) Has clearly labeled and descriptive headings or sections, has an online index connected to a search engine and/or hyperlinks that directly take the user to the information, and has a comprehensive search engine that permits users to obtain information by various query terms including, but not limited to, vehicle model, model year, bulletin number, diagnostic procedure, and trouble code.
 - (E) Provides, at a minimum, e-mail access for communication with a designated contact person(s). The contact person(s) shall respond to any inquiries within 2 days of receipt, Monday through Saturday. The website shall also provide a business address for the purposes of receiving mail, including overnight or certified mail.

- (F) Lists the most recent updates to the website. Updates must occur concurrently with the availability of new or revised information to franchised dealerships.
 - (G) Provides all training materials offered by the motor vehicle manufacturer. For obtaining any training materials that are not in a format that can be readily downloaded directly from the Internet (e.g., instructional tapes, full-text information associated with bundled software, CD-ROMs, or other media), the website must include information on the type of materials that are available, and how such materials can be purchased.
 - (H) Offers media files (if any) and other service information documents in formats that can be viewed with commonly available software programs (e.g., Adobe Acrobat, Microsoft Word, RealPlayer, etc.).
 - (I) Provides secure Internet connections (i.e., certificate-based) for transfer of payment and personal information.
 - (J) Provides ordering information and instructions for the purchase of motor vehicle manufacturer emission-related enhanced diagnostic tools and reprogramming information pursuant to subsection (f).
 - (K) Complies with the SAE Recommended Practice J1930, "Electrical/Electronic Systems, Diagnostic Terms, Definitions, Abbreviations, and Acronyms," May 1998, incorporated by reference herein, for all emission-related motor vehicle information beginning with the 2003 model year.
 - (L) Complies with the following website performance criteria:
 - (i) Possesses sufficient server capacity to allow ready access by all users and has sufficient downloading capacity to assure that all users may obtain needed information without undue delay.
 - (ii) Broken weblinks shall be corrected or deleted weekly.
 - (iii) Website navigation does not require a user to return to the motor vehicle manufacturer's home page or a search engine in order to access a different portion of the site. The use of "one-up" links (i.e., links that connect to related webpages that preceded the one being viewed) is recommended at the bottom of subordinate webpages in order to allow a user to stay within the desired subject matter.
 - (iv) Any manufacturer-specific acronym shall be hyperlinked to a webpage or pop-up window which explains its meaning.
 - (M) Indicates the minimum hardware and software specifications required for satisfactory access to the website(s).
- (3) All information must be maintained by the motor vehicle manufacturer for a minimum of fifteen years. After such time, the information may be retained in an off-line electronic format (e.g., CD-ROM) and made available for purchase in that format at fair, reasonable, and

nondiscriminatory prices upon request. Motor vehicle manufacturers shall index their available archived information with a title that adequately describes the contents of the document to which it refers. Motor vehicle manufacturers may allow for the ordering of information directly from the website, or from a website hyperlinked to the motor vehicle manufacturer website. In the alternative, motor vehicle manufacturers shall list a phone number and address where covered persons can call or write to obtain requested information through reasonable business means.

- (4) Motor vehicle manufacturers must implement fair, reasonable, and nondiscriminatory pricing structures that provide for a range of time periods for online access (e.g., in cases where information can be viewed online) and/or the amount of information purchased (e.g., in cases where information becomes viewable after downloading). These pricing structures shall be submitted to the Executive Officer for review concurrently with being posted on the motor vehicle manufacturer's service information website(s).
 - (5) Motor vehicle manufacturers must provide the Executive Officer with free, unrestricted access to their Internet websites. Access shall include the ability to view and download posted service information. The information necessary to access the websites (e.g., user name, password, contact person) must be submitted to the Executive Officer once the websites are operational.
 - (6) Reporting Requirements. Motor vehicle manufacturers shall provide the Executive Officer with reports that adequately demonstrate that the performance of their individual Internet websites meets the requirements of subsection (e)(2). Motor vehicle manufacturers shall submit such reports annually by December 31st. The Executive Officer may also require motor vehicle manufacturers to submit additional reports upon request, including any information required by the United States Environmental Protection Agency under the Federal Service Information Rule. These reports shall be submitted in a format prescribed by the Executive Officer.
- (f) Diagnostic and Reprogramming Tools and Information.
- (1) Diagnostic and Reprogramming Tools. Motor vehicle manufacturers shall make available for purchase through reasonable business means, including ordering over the Internet, to all covered persons, all emissions-related enhanced diagnostic tools, and reprogramming tools available to franchised dealers, including software and data files used in such equipment. The motor vehicle manufacturer shall ship purchased tools to a requesting covered person as expeditiously as possible after a request has been made.
 - (2) Data Stream and Bi-Directional Control Information. Motor vehicle manufacturers shall make available for purchase through reasonable

business means, to all equipment and tool companies, all information necessary to read and format all emission-related data stream information, including enhanced data stream information, that is used in diagnostic tools available to franchised dealerships, and all information that is needed to activate all emission-related bi-directional controls that can be activated by franchised dealership tools. The motor vehicle manufacturer shall make such information available through the Internet or other reasonable business means to the requesting equipment and tool company within 14 days after the request to purchase has been made, unless the motor vehicle manufacturer petitions the Executive Officer for approval to refuse to disclose such information to the requesting company. After receipt of a petition and consultation with the affected parties, the Executive Officer shall either grant or refuse the petition based on the evidence submitted during the consultation process:

- (A) If the evidence demonstrates that the motor vehicle manufacturer has a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools, the petition will be granted.
 - (B) If the evidence does not demonstrate that the motor vehicle manufacturer has a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools, the petition will be denied and the motor vehicle manufacturer shall make the requested information available to the requesting equipment and tool company within 2 days of the denial.
- (3) Reprogramming Information.
- (A) Beginning with the 2004 model year, motor vehicle manufacturers' reprogramming methods shall be compatible with SAE J2534 Paper, "Recommended Practice for Pass-Thru Vehicle Programming, ~~February 2002~~ December(?) 2003, which is incorporated by reference herein, for all vehicle models that can be reprogrammed by franchised dealerships.
 - (B) Motor vehicle manufacturers shall make available for purchase through reasonable business means to covered persons for vehicle models meeting the requirements of subsection (f)(3)(A) all vehicle reprogramming information and materials necessary to install motor vehicle manufacturers' software and calibration data to the extent that it is provided to franchised dealerships. The motor vehicle manufacturer shall, within 2 days of receipt of a covered person's request, provide purchased reprogramming information via an Internet download or, if available in a different electronic format, via postal mail or package delivery service.
- (4) The information and tools required by this subsection shall be made available for purchase no later than 180 days after ~~the effective date of~~

~~these regulations or January 1, 2003, whichever is later, October 1, 2002, for vehicle models introduced into commerce on or before these dates October 1, 2002.~~ For all new vehicle models for which ~~production commences~~ introduction into commerce occurs after the ~~above dates, October 1, 2002,~~ motor vehicle manufacturers shall make available for purchase the required information no later than 180 days after the start of vehicle introduction into commerce or concurrently with its availability to franchised dealerships, whichever occurs first.

- (g) Costs: All information and diagnostic and reprogramming tools required to be provided to covered persons by these regulations shall be made available for purchase at a fair, reasonable, and nondiscriminatory prices.
- (h) Motor vehicle manufacturers shall not utilize any access code, recognition code or encryption for the purpose of preventing a vehicle owner from using an emission-related motor vehicle part (with the exception of the powertrain control module, engine control modules and transmission control modules), that has not been manufactured by that motor vehicle manufacturer or any of its original equipment suppliers.
- (i) Trade Secrets: Motor vehicle manufacturers may withhold trade secret information (as defined in the Uniform Trade Secret Act contained in Title 5 of the California Civil Code) which otherwise must be made available for purchase, subject to the following:
 - (1) At the time of initial posting of all information required to be provided under sections (d) through (f) above, the motor vehicle manufacturer shall identify, by brief description, any information that it believes to be a trade secret and not subject to disclosure.
 - (2) A covered person, believing that a motor vehicle manufacturer has not fully provided all information that is required to be provided under subsections (d) through (f) above shall submit a request in writing by certified mail to the motor vehicle manufacturer for release of the information.
 - (3) Upon receipt of the request for information, a motor vehicle manufacturer shall do the following:
 - (A) If it had not previously made the information available for purchase because of an oversight, it shall make the information available within 2 days from receipt of the request directly to the requesting covered person at a fair, reasonable, and nondiscriminatory price and by reasonable business means. Additionally, the motor vehicle manufacturer shall, within 7 days, make such information available for purchase to other covered persons consistent with the requirements of these regulations.
 - (B) If it has not made the requested information available for purchase because it believes the information to be a trade secret,

it shall within 14 days, notify the requesting covered person that it considers the information to be a trade secret, provide justification in support of its position, and make reasonable efforts to see if the matter can be resolved informally.

- (C) If during this 14 day period set forth in paragraph (B), the motor vehicle manufacturer determines that the information is, in fact, not a trade secret, it shall immediately notify the requesting covered person of its determination and make the information available within the timeframes and means set forth in paragraph (A)
 - (D) If the parties can informally resolve the matter, the motor vehicle manufacturer shall within 2 days provide the requesting covered person with all of the information that is subject to disclosure consistent with that agreement. The motor vehicle manufacturer shall also, within 7 days, make such information available for purchase to other covered persons consistent with the requirements of these regulations.
 - (E) If the matter cannot be informally resolved, the motor vehicle manufacturer shall, within 21 days from the date that it initially received the request for information, petition the California superior court for declaratory relief to make a finding that the information is exempt from disclosure because it is a trade secret. The petition shall be filed in accordance with the California Code of Civil Procedure section 395 et seq. The petition shall be accompanied with a declaration stating facts that show that the motor vehicle manufacturer has made a reasonable and good faith attempt to informally resolve the matter.
- (j) Executive Officer Review of Compliance.
- (1) The Executive Officer shall monitor compliance with the requirements of Health and Safety Code section 43105.5 and this regulation.
 - (2) The Executive Officer, through the Chief of the Mobile Source Operations Division (Division Chief), shall periodically audit a motor vehicle manufacturer's Internet website(s) and other distribution sources to determine whether the information requirements of Health and Safety Code section 43105.5 and this regulation are being fulfilled. Motor vehicle manufacturers must provide the Executive Officer with free unrestricted access to the sites and other sources for the purposes of an audit.
 - (3) The Division Chief shall also commence an audit upon receipt of a request from a covered person that provides reasonable cause to believe that a motor vehicle manufacturer is not in compliance.
 - (A) Such a request shall be in the form of a written declaration setting forth specific details of the alleged noncompliance of the motor vehicle manufacturer. The declaration shall also set forth facts

- that demonstrate that the requesting covered has undertaken efforts to resolve the matter informally with the named motor vehicle manufacturer.
- (B) The covered person shall concurrently serve a copy of the audit request on the motor vehicle manufacturer against whom the request has been filed.
 - (C) The Division Chief shall determine if the request, on its face, sets forth facts establishing reasonable cause to believe that that motor vehicle manufacturer is in noncompliance with Health and Safety Code section 43105.5 or these regulations and that the covered person has undertaken reasonable efforts to informally resolve the alleged noncompliance with the motor vehicle manufacturer directly. If the Division Chief determines that the request satisfies these conditions, he or she shall conduct an audit of the designated motor vehicle manufacturer's site. Otherwise, the Division Chief shall dismiss the request and notify the requesting covered person and the affected motor vehicle manufacturer of his or her determination.
- (4) In conducting any audit, the Division Chief may require the motor vehicle manufacturer to provide the ARB with all information and materials related to compliance with the requirements of Health and Safety Code section 43105.5 and this regulation, including but not limited to:
 - (A) Copies of all books, records, correspondence or documents in its possession or under its control that the motor vehicle manufacturer is required to provide to persons engaged in the service and repair industries and to equipment and tool companies under paragraphs (c) through (f) of this regulation, and
 - (B) Any and all reports or records developed or compiled either for or by the motor vehicle manufacturer to monitor performance of its Internet site(s).
 - (5) In conducting the audit, the Division Chief may order or subpoena the motor vehicle manufacturer, the party filing the request for inspection, or any other person with possible knowledge of the issue of noncompliance to appear in person and testify under oath. The Division Chief may also request or subpoena such persons to provide any additional information that the Division Chief deems necessary to determine any issue of noncompliance.
 - (6) Except for good cause, the audit shall be completed within 60 days from the date that the Division Chief notifies the motor vehicle manufacturer about the audit. At the conclusion of the audit, the Division Chief shall issue a written determination, with supporting findings, regarding compliance by the motor vehicle manufacturer.
 - (7) If the Division Chief finds sufficient credible evidence that the motor vehicle manufacturer is not in compliance with any requirements of

Health and Safety Code section 43105.5 or this regulation, the determination shall be in the form of a notice to comply against the motor vehicle manufacturer.

- (8) The Division Chief's determination not to issue a notice to comply against a motor vehicle is subject to limited review by the Executive Officer.
 - (A) A covered person may only request that the Executive Officer review a determination that it specifically requested pursuant to paragraph (3) above.
 - (B) The covered person shall file the request for Executive Officer review within 10 days from the date of issuance of the Division Chief's determination.
 - (i) The request shall be filed to the attention of the Executive Officer c/o Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812-2815. A copy of the request shall be concurrently served on the motor vehicle manufacturer that was the subject of the audit and determination.
 - (ii) The request shall set forth specific facts and reasons why the determination should be reviewed and supporting legal authority for why a notice to comply should have been issued.
 - (C) The motor vehicle manufacturer may file an opposition to the request for review within 10 days from the date of service of the request for review.
 - (D) The Executive Officer shall issue a determination within 30 days from the last day that the motor vehicle manufacturer had to file an opposition. The Executive Officer may affirm the decision of the Division Chief; remand the matter back to the Division Chief for further consideration or evidence; or issue a notice to comply against the motor vehicle manufacturer.
- (9) Within 30 days from the date of issuance of a notice to comply, the motor vehicle manufacturer shall either:
 - (A) Submit to the Executive Officer a compliance plan that adequately demonstrates that the motor vehicle manufacturer will come into compliance with this section within 45 days from the date of submission of the plan, or such longer period that the Executive Officer deems appropriate to allow the motor vehicle manufacturer to properly remedy the noncompliance; or
 - (B) Request an administrative hearing to consider the basis or scope of the notice to comply.
- (10) If the motor vehicle manufacturer elects to submit a compliance plan, the Executive Officer shall review the plan and issue a written determination, within 30 days, either accepting or rejecting the plan. The Executive Officer shall reject the compliance plan if the Executive Officer finds that it will not bring the motor vehicle manufacturer into

compliance within 45 days from the date that the plan would have been approved, or such longer period that the Executive Officer deemed appropriate to allow the motor vehicle manufacturer to properly remedy the noncompliance. The Executive Officer shall notify the motor vehicle manufacturer in writing of his or her determination, and that the Executive Officer will be seeking administrative review pursuant to subsection (k) below.

- (11) After approving a proposed compliance plan, if the Executive Officer determines that the motor vehicle manufacturer has failed to comply with the terms of the plan, the Executive Officer shall notify the motor vehicle manufacturer of his or her determination and that he or she will be seeking administrative review pursuant to subsection (k) below.

(k) Administrative Hearing Review.

- (1) A motor vehicle manufacturer may request that a hearing officer review the basis and scope of the notice to comply. Failure by the motor vehicle manufacturer to request such a review and failing, in the alternative, to submit a compliance plan as required by paragraph (j)(8)(A) shall result in the Executive Officer's determination becoming final and may subject the motor vehicle manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f) and paragraph (l).
- (2) The Executive Officer shall forward the following matters to a hearing officer for appropriate administrative review, including, if warranted, consideration of penalties:
 - (A) A compliance plan that it has rejected pursuant to paragraph (j)(9).
 - (B) A notice to comply that has been issued against a motor vehicle manufacturer who has failed to either request administrative review of the Executive Officer determination, or, in the alternative, to submit a compliance plan.
 - (C) An Executive Officer determination that a motor vehicle manufacturer has failed to satisfy the terms of a compliance plan it has submitted in response to a notice to comply.
- (3) Administrative hearings under this regulation shall be conducted pursuant to the procedures set forth in title 17, California Code of Regulations, section 60060 et seq.

(l) Penalties.

- (1) If after an administrative hearing, the hearing officer finds that the motor vehicle manufacturer has failed to comply with any of the requirements of this section, and the motor vehicle manufacturer fails to correct the violation within 30 days from the date of his finding, the hearing officer may impose a civil penalty upon the motor vehicle manufacturer in an amount not to exceed \$25,000 per day (including

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Saturdays, Sundays, and observed holidays) per violation until the violation is corrected. The hearing officer may immediately impose a civil penalty in cases where a motor vehicle manufacturer has failed to act in accordance with a compliance plan it has previously submitted.

- (2) For purposes of this section, a finding by a hearing officer that a motor vehicle manufacturer has failed to comply with the requirements of Health and Safety Code section 43105.5 and title 13, CCR, section 1969 et seq., including the failure to submit a timely compliance plan, shall be considered a single violation.

NOTE: Authority cited: sections 39600, 39601, 43018 and 43105.5, Health and Safety Code. Reference: section 39027.3, 43104 and 43105.5, Health and Safety Code; section 335 et seq. California Code of Civil Procedure.